

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JUSTIN LEE HOFFMAN,)	
)	
Petitioner)	
)	
vs.)	CAUSE NO. 3:09-CV-106 RM
)	(Arising out of 3:06-CR-85(01) RM)
UNITED STATES OF AMERICA,)	
)	
Respondent)	

OPINION AND ORDER

Justin Hoffman has appealed this court's denial of his § 2255 petition and has moved to proceed *in forma pauperis* on appeal. The court denied Mr. Hoffman's motion for a certificate of appealability on December 7, 2009 [Doc. No. 13, 3:09-CV-106].

An appeal may not be taken *in forma pauperis* if it is not taken in good faith. 28 U.S.C. § 1915(a)(3). The appointment of CJA counsel during previous proceedings doesn't automatically entitle Mr. Hoffman to proceed *in forma pauperis* on appeal. See FED. R. APPELLATE PROC. 24(a)(3)(A). On the other hand, the denial of a certificate of appealability doesn't automatically require the denial of a motion to proceed *in forma pauperis* because the standard for a certificate of appealability is more demanding than the standard for determining if an appeal is taken in good faith. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000).

In denying Mr. Hoffman's certificate of appealability, the court determined

that Mr. Hoffman hadn't made "a substantial showing of the denial of a constitutional right" and that reasonable jurists would not debate whether the petition should have been resolved differently under Griffin v. United States, 502 U.S. 46 (1991). Order Denying Certificate of Appealability, December 7, 2009, at 1-2 [Doc. No. 13, 3:09-cv-106] (quoting 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S., 322, 336 (2003)). To allow Mr. Hoffman to proceed on appeal *in forma pauperis*, the court must decide whether "a reasonable person could suppose that the appeal has some merit," Walker v. O'Brien, 216 F.3d at 632, which is to say whether the appeal is non-frivolous. See Lee v. Clinton, 209 F.3d 1025, 1027 (7th Cir. 2000).

The court denied Mr. Hoffman's § 2255 petition pursuant to Griffin v. United States, 502 U.S. 46 (1991) and Strickland v. Washington, 466 U.S. 668 (1984). Under Griffin, defense counsel's performance was objectively reasonable and didn't prejudice Mr. Hoffman. It is close, but nonetheless the court finds that the appeal isn't entirely frivolous. Therefore, the court GRANTS Mr. Hoffman's motion to appeal *in forma pauperis*. [Doc. No. 18, 3:09-cv-106].

SO ORDERED.

ENTERED: February 11, 2010

/s/ Robert L. Miller, Jr.
Judge
United States District Court

cc: J. Hoffman
J. Barrett